

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 537 of 1999

in

SPECIAL CIVIL APPLICATION No 5477 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

CHHOTALAL LALJIBHAI CHANDSARA

Versus

LUBI ELECTRICALS LTD.

Appearance:

MR MUKUL SINHA for Appellants
MR NAVIN K PAHWA for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 26/04/1999

ORAL JUDGEMENT

This appeal is filed against summary dismissal of Special Civil Application No. 5477 of 1998 on April 8, 1999.

The respondents herein employed several workmen. It was the case of the employees that they have not been paid even minimum wages by the employer. A large majority of workmen, therefore, became members of Gujarat Majdoor Sabha ('union' for short) in the year 1998 and demanded payment of minimum wages. It was the allegation of the employees that with a view to break the union, the employer resorted to illegal lock out. About 200 workmen became jobless. The management also suspended about 40 workmen by issuing show cause notices and/or charge sheets. It was the assertion of the workmen that the alleged acts did not amount to misconduct under the Model Standing Orders. They, therefore, moved I.E.S.O. Application before the Labour court under Section 13A of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as the Act) and requested the court to grant status-quo order during the pendency of the proceedings. The said prayer was, however, rejected by the Labour Court inter alia on the ground that the Labour court had no jurisdiction to grant interim relief. The Labour Court also observed that even on merits, it was not a fit case to grant interim relief.

Being aggrieved by the said order, the appellant union approached this court by filing the above petition. The learned Single Judge relying upon the decision of a Single Judge of this court in Tata Chemicals Ltd. and others vs. K.C. Adhvaryu, (1964) 5, GLR 649 and followed by a Division Bench in Amini Jonh vs. Barofarn Chemicals Ltd., (1993) 1 L.L.N, 104, held that the point was concluded by the above two pronouncements of this Court and that by refusing interim relief to the workmen, the Labour Court had not committed any error of law. In the opinion of the learned Single Judge, powers under Section 13-A of the Act were declaratory in nature and no interim relief could be granted under the said provision. In view of the above finding, the learned Single Judge summarily dismissed the petition and also vacated ad-interim relief granted earlier.

We have heard Mr. Mukul Sinha for the appellant and Mr.P.M.Thakkar, Senior Advocate for Thakkar Associates (on caveat) for the respondents.

Mr. Sinha submitted that the questions raised before the learned Single Judge were important in nature and were of far reaching consequences. He, therefore, submitted that

in the facts and circumstances of the case, the matter deserved admission and final disposal by a judgment after full fledged hearing. Summary dismissal was , therefore, not justified. He also contended that the Labour Court as well as the learned Single Judge have committed an error of law in observing that the Labour court had no jurisdiction to grant interim relief. According to him, under the provisions of Section 13-A of the Act, such power is vested in the Labour Court and to that extent, the decisions rendered by the Labour Court and the learned Single Judge were contrary to law. In the alternative, Mr. Sinha submitted that a prayer for status-quo cannot be equated with the prayer for interim relief . According to the counsel, it was the duty of the Labour court to interpret the provisions of Section 13-A and to direct maintenance of status-quo during the pendency of the application so that at the time of final disposal, the Labour Court would be in a position to decide whether any question had arisen as to application and/or interpretation of the Standing Orders certified under the Act. Mr. Sinha also contended that if the view taken by the Labour Court and confirmed by the learned Single Judge is upheld, the provisions of Section 13-A would become nugatory and the entire object of enacting the provisions would be frustrated inasmuch as in absence of interim relief or status-quo, an action can be taken by the employer. It is no doubt true that such action can be challenged under the provisions of the Industrial Disputes Act 1947, but when Parliament has granted power by making specific provisions under section 13-A, such power in an appropriate case can be exercised before an action is taken so as to avoid proceedings under the Industrial Disputes Act. For that , our attention was invited to Section 13-A of the Act as also to Chapter III of the Industrial Disputes Act read with Second Schedule. According to him, provisions of Section 10 of the Industrial Disputes Act would apply only after provisions of Section 13-A of the Act get exhausted. According to Mr. Sinha, the provisions of both the Acts are totally different and distinct. Our attention was also invited to a decision of the Supreme court in M/s Glaxo Laboratories (P) Ltd. vs. Presiding Officer, Labour court, Meerut ,AIR 1984, SC, 505 and of this court in Mafatlal Apparels Manufacturing Company Limited vs. Mafatlal Apparels Workers' Union and another, 1992 (2) GLH, 557.

Mr. Thakkar, on the other hand, supported the order passed by the Labour court and confirmed by the learned Single Judge. He contended that the learned Single Judge was right in observing that Section 13-A is declaratory

in nature and no relief , interim or final, can be granted under the said provision. He also submitted that the Act refers only to interpretation of Standing Orders and no relief can be granted to the applicant under the said section. According to Mr. Thakkar, this point is covered by two decisions of this Court and since the second decision was of a Division Bench, this court is bound by the latter decision. He submitted that decision in M/s Glaxo Laboratories case would not apply to the facts of the instant case and the learned Single Judge has rightly distinguished the said decision . Mr. Thakkar he submitted that even if it is assumed that the Labour court has power, authority or jurisdiction to grant interim relief, in the facts and circumstances of the case, the Labour Court rightly refused interim relief and the said order cannot be said to be contrary to law. On all these grounds, he submitted that LPA deserves to be dismissed.

Having considered rival contentions of the parties, we are of the considered opinion that no error of law and/or of jurisdiction has been committed by the learned Single Judge in dismissing the petition of the petitioner-appellants. In our view, the point is concluded by a decision of this Court in Tata Chemicals Ltd (supra) . Interpreting the provisions of Section 13A of the Act, Bhagwati,J. (as His Lordship then was) precisely negated the contention which was raised before him that the provisions of Section 13A would include grant of interim relief. Construing Section 13A in the light of the several decisions, the learned Single Judge observed that Section provides only for reference of a question as to the application of interpretation of a Standing Order certified under the Act and the Labour Court is authorised to give its decision on the question so referred. The function of the Labour Court is limited only to the decision of the question as to the application or interpretation of the Standing Order which is referred to it. The Labour Court is not invested with the power to grant relief in enforcement of the rights and liabilities created by the Standing Orders.

Negating the contention that the power conferred on the Labour Court under Section 13A to decide any question as to the application or interpretation of the Standing Order which would include grant of interim relief, the Court stated that :

"I cannot assent to this proposition. There is a wide difference between a power to determine a question and a power to grant relief by way of

redress of a grievance that any right or obligation has been violated. No power to grant relief byway of enforcement of the rights and obligations created by the Standing Orders can be implied merely from the conferment of power on the Labour court to decide any question as to the application or interpretation of a Standing Order which might be referred to it by the employer or the workman Though in making this submission, Mr. I.M.Nanavati did not expressly state so, he really relied on the doctrine of implied powers. But as pointed out by the Supreme court in Bidi Leaves etc. Association vs. The State (LXIV 1961 Bombay Law Reporter 375) , the doctrine of implied powers cannot be invoked unless it is found that a power conferred on an authority cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exit. The two powers, the one actually conferred on the Labour court by section 13A and the other sought to be attributed to the Labour court by Mr. I.M.Nanavati are essentially distinct powers and it is not necessary to the exercise of the former that the latter should also exist in the Labour court. Even without having the latter powers, the Labour court can effectively exercise the former power. It clearly appears from these considerations that sec.13A has been enacted with a view to resolving differences which may arise between the employer and the workman as to the application or interpretation of a Standing Order which do not involve the enforcement of the rights and liabilities created under the Standing Orders by giving redress to one party or the other . If any action is taken by the employer in violation of the Standing Orders which requires redress to be given to the workmen, such redress cannot be given by the Labour court under Sec. 13A and unless the Union espouses the cause of the workman and raises an industrial dispute which may be referred by the appropriate Government to the Labour court for adjudication under the provisions of sec.10 or 12 of the Industrial Disputes Act, 1947, the only remedy available to the workman would be to file a civil suit for securing such redress. Section 13A cannot stand in the way of the workman seeking such redress from the civil court".

A similar question arose once again before a Division

Bench of this Court in Amini John (supra). Speaking for the court, Nainar Sunderam, C.J. observed that the Division Bench was in "respectful agreement" with the view expressed by the learned Single Judge in Tata Chemicals (supra). We are bound by the decision of the Division Bench of this Court. It is true that the learned counsel for the appellants submitted that the above view does not lay down correct law on the point and that the matter may be referred to a larger Bench. In our opinion, however, only interpretation of Section 13A is as held by the learned Single Judge in Tata Chemicals (supra) and followed with approval in Amini John by a Division Bench. If it be so, obviously, no interim relief can be granted. In these circumstances, in our opinion, no case is made out by the learned counsel for the appellant so that matter can be placed before a larger Bench.

Alternative contention of the learned counsel that the grant of status quo cannot be said to be interim relief, has also no substance. Grant of status quo, in our considered opinion, is also interim relief of a limited nature in the sense that by such order, the court or a Tribunal directs the parties by way of an order to maintain position as it prevails. As no such relief can be granted by a Labour Court in exercise of the powers under Section 13A of the Act, by not granting such relief, no error of law has been committed by it. The learned Single Judge, therefore, dismissed the petition and in our opinion, rightly.

For the foregoing reasons, we see no substance in any of the contentions raised by the learned counsel for the appellants. Letters Patent Appeal is accordingly dismissed. No order as to costs.

parekh